

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

IN RE: DePUY ORTHOPAEDICS, INC.)
ASR HIP IMPLANT PRODUCTS) MDL No. 1:10 md 2197
LIABILITY LITIGATION)
)
) **SHORT FORM COMPLAINT**
) **FOR**
) **DePUY ORTHOPAEDICS, INC.**
) **ASR HIP IMPLANT PRODUCTS**
) **LIABILITY LITIGATION**

This applies to:

JURY TRIAL DEMAND

Beverly Dempsey and James Dempsey v. DePuy Orthopaedics, Inc. *et al.*

Beverly Dempsey and James Dempsey,

Plaintiffs,

-against-

DePUY ORTHOPAEDICS, INC., DePUY
INC., DEPUY INTERNATIONAL LIMITED,
JOHNSON & JOHNSON, JOHNSON &
JOHNSON SERVICES, INC.
JOHNSON & JOHNSON INTERNATIONAL,

Defendants

**ABBREVIATED SHORT FORM COMPLAINT FOR DePUY ORTHOPAEDICS,
INC. ASR HIP IMPLANT PRODUCTS LIABILITY LITIGATION**

1. Plaintiffs, Beverly Dempsey and James Dempsey, state and bring this civil action before the Court for the United States District Court for the Northern District of Ohio as a related action in the matter entitled IN RE: DePUY ORTHOPAEDICS, INC. ASR HIP IMPLANT PRODUCTS LIABILITY LITIGATION, MDL No. 2197. Plaintiffs are filing this short form complaint as permitted by Case Management Order No. 4 of this Court.

ALLEGATIONS AS TO VENUE

2. Venue of this case is appropriate in Federal Court, District of Minnesota. Plaintiffs state that but for the Order permitting direct filing into the Northern District of Ohio pursuant to Case Management Order No. 4, Plaintiffs would have filed in the Federal Court, District of Minnesota. Therefore, Plaintiffs respectfully request that at the time of transfer of this action back to the trial court for further proceedings that this case be transferred to the above referenced District Court.

3. Plaintiff, Beverly Dempsey, is a resident and citizen of Marshall, Minnesota and claims damages as set forth below. Plaintiff's Spouse, James Dempsey, is a resident and citizen of Marshall, Minnesota and claims damages as a result of loss of consortium.

4. Plaintiff Beverly Dempsey was born in 1942.

5. Plaintiff claims damages as a result of:

- ☒ injury to Beverly Dempsey
- ☐ injury to the person represented
- ☐ wrongful death
- ☐ survivorship action

_____ economic loss
_____ loss of services
 X loss of consortium

ALLEGATIONS AS TO INJURIES

6. Plaintiff Beverly Dempsey was implanted with a DePuy ASR hip implant on her right hip on or about June 19, 2008 at Avery Hospital in Marshall, Minnesota, by Dr. Anthony Nwakama.

7. On or about August 26, 2010, Plaintiff Beverly Dempsey suffered the following personal and economic injuries as a result of the implantation with the ASR hip implant: Plaintiff Beverly Dempsey has suffered pain, suffering, disability, emotional distress, economic loss and medical expense as a result of injuries caused by the ASR hip implant. Plaintiff Beverly Dempsey will in the future suffer pain, suffering, disability, emotional distress, economic loss and medical expenses. In addition, Plaintiff Beverly Dempsey has been exposed to chromium and cobalt as a result of the ASR implant and has been damaged, physically and emotionally from said exposure.

8. Plaintiff Beverly Dempsey had the right ASR hip implant explanted on August 27, 2013 at Avery Hospital in Marshall, Minnesota, by Dr. Anthony Nwakama.

9. Plaintiff Beverly Dempsey has suffered injuries as a result of the implantation and explantation of the DePuy ASR hip implant manufactured by defendants as shall be fully set forth in Plaintiffs' Fact Sheet and other responsive documents provided to the defendants and are incorporated by reference herein.

10. At the time of implantation with the ASR hip implant, the Plaintiffs resided at 503 Elaine Avenue, Marshall, MN 56258.

11. The defendants by their actions or inactions, proximately caused Plaintiffs' injuries.

12. The Plaintiffs could not have known that the injuries Beverly Dempsey suffered were as a result of a defect in the ASR hip implant until after the date the device was recalled from the market and the Plaintiffs came to learn of the recall.

13. The Plaintiffs could not have known that Beverly Dempsey was injured by excessive levels of chromium and cobalt until after the date Beverly Dempsey had her blood drawn and she was advised of results of said blood-work.

14. As a result of the injuries Plaintiffs Beverly Dempsey and James Dempsey sustained, Plaintiffs are entitled to recover compensatory damages for pain and suffering and emotional distress and for economic loss as well as punitive damages.

ALLEGATIONS AS TO THE DEFENDANTS
SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY

15. The following claims and allegations are asserted by Plaintiffs and are herein adopted by reference:

 X FIRST CAUSE OF ACTION

(NEGLIGENCE);

 X SECOND CAUSE OF ACTION

(NEGLIGENCE PER SE);

 X THIRD CAUSE OF ACTION

(STRICT PRODUCTS LIABILITY-DEFECTIVE DESIGN);

 X FOURTH CAUSE OF ACTION

(STRICT PRODUCTS LIABILITY- MANUFACTURING DEFECT);

 X FIFTH CAUSE OF ACTION

(STRICT PRODUCTS LIABILITY-FAILURE TO WARN);

 X SIXTH CAUSE OF ACTION

(BREACH OF EXPRESS WARRANTY);

 X SEVENTH CAUSE OF ACTION

(BREACH OF WARRANTY AS TO MERCHANTABILITY);

 X EIGHTH CAUSE OF ACTION

(BREACH OF IMPLIED WARRANTIES);

 X NINTH CAUSE OF ACTION

(FRAUDULENT MISREPRESENTATION);

 X TENTH CAUSE OF ACTION

(FRAUDULENT CONCEALMENT);

 X ELEVENTH CAUSE OF ACTION

(NEGLIGENT MISREPRESENTATION);

 X TWELFTH CAUSE OF ACTION

(FRAUD AND DECEIT);

 X THIRTEENTH CAUSE OF ACTION

(UNFAIR AND DECEPTIVE TRADE PRACTICES UNDER STATE
LAW);

 X FOURTEENTH CAUSE OF ACTION

(MISREPRESENTATION BY OMISSION);

 X FIFTEENTH CAUSE OF ACTION

(CONSTRUCTIVE FRAUD);

 X SIXTEENTH CAUSE OF ACTION

(NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS);

 X SEVENTEENTH CAUSE OF ACTION

(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS);

 X EIGHTEENTH CAUSE OF ACTION

(GROSS NEGLIGENCE/MALICE);

 X NINETEENTH CAUSE OF ACTION

(LOSS OF CONSORTIUM);

 X TWENTIETH CAUSE OF ACTION

(PUNITIVE DAMAGES);

 X TWENTY-FIRST CAUSE OF ACTION

(MEDICAL MONITORING);

 X TWENTY-SECOND CAUSE OF ACTION

(VIOLATION OF APPLICABLE STATE CONSUMER FRAUD
STATUTE);

 X TWENTY-THIRD CAUSE OF ACTION

(RESTITUTION OF ALL PURCHASE COSTS AND
DISGORGEMENT OF ALL PROFITS FROM MONIES THAT
PLAINTIFF INCURRED IN PURCHASE OF THE HIP IMPLANT);

PLAINTIFFS ASSERT THE FOLLOWING ADDITIONAL STATED CAUSES
OF ACTION:

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For compensatory damages requested and according to proof;
2. For punitive or exemplary damages against Defendants;
3. For all applicable statutory damages of whose laws will govern this action;
4. For medical monitoring, whether denominated as damages or in the form of equitable relief;
5. For an award of attorney's fees and costs;
6. For prejudgment interest and the costs of suit; and
7. For such other and further relief as this Court may deem just and proper;

JURY DEMAND

Plaintiffs hereby demand a trial by jury as to all claims in this action.

SCHWEBEL, GOETZ & SIEBEN, P.A.

Dated: January 2, 2014

/s/ Courtney A. Lawrence
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